

SAUL EWING
ARNSTEIN
& LEHR LLP

William C. Baton
Phone: (973) 286-6722
Fax: (973) 286-6822
wbaton@saul.com
www.saul.com

December 8, 2020

VIA ECF & FEDEX

The Honorable Edward S. Kiel, U.S.M.J.
United States Post Office & Courthouse
2 Federal Square
Newark, NJ 07101-0999

Re: *TherapeuticsMD, Inc. v. Teva Pharmaceuticals USA, Inc.*
Civil Action Nos. 20-3485 (consolidated) & 20-17496 (BRM)(ESK)

Dear Judge Kiel:

This firm, together with Haug Partners LLP, represents Plaintiff TherapeuticsMD, Inc. in the above-captioned matters.

Enclosed is a Proposed Consolidation Order to which the parties have agreed, which, subject to Your Honor's approval, would consolidate these cases for all purposes and modestly adjust the case schedule in Civil Action No. 20-3485 to account for the consolidation. If the Proposed Consolidation Order meets with the Court's approval, we respectfully request that Your Honor sign and have it entered on the respective dockets to formally effect consolidation.

Thank you for Your Honor's kind attention to these matters.

Respectfully yours,



William C. Baton

Enclosure

cc: Hon. Brian R. Martinotti, U.S.D.J. (via ECF)
All Counsel (via e-mail)

Charles M. Lizza
William C. Baton
Sarah A. Sullivan
SAUL EWING ARNSTEIN & LEHR LLP
One Riverfront Plaza, Suite 1520
Newark, New Jersey 07102-5426
(973) 286-6700
clizza@saul.com
wbaton@saul.com

*Attorneys for Plaintiff
TherapeuticsMD, Inc.*

Liza M. Walsh
Christine I. Gannon
William T. Walsh, Jr.
WALSH PIZZI O'REILLY FALANGA LLP
Three Gateway Center
100 Mulberry Street, 15th Floor
Newark, NJ 07102
(973) 757-1100

*Attorneys for Defendant
Teva Pharmaceuticals USA, Inc.*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

THERAPEUTICSMD, INC.,

Plaintiff,

v.

TEVA PHARMACEUTICALS USA, INC.,

Defendant.

Civil Action No. 20-3485 (BRM)(ESK)
Civil Action No. 20-8809 (BRM)(ESK)
Civil Action No. 20-11087 (BRM)(ESK)
Civil Action No. 20-17496 (BRM)(ESK)
(consolidated)

(Filed Electronically)

[PROPOSED] ORDER CONSOLIDATING CASES FOR ALL PURPOSES

WHEREAS, Plaintiff TherapeuticsMD, Inc. (“TherapeuticsMD”) filed Civil Action No. 20-3485 in this Judicial District against Defendants Teva Pharmaceuticals USA, Inc. (“Teva USA”) and Teva Pharmaceutical Industries Limited (“Teva Ltd.”) on April 1, 2020;

WHEREAS, TherapeuticsMD filed the related Civil Action No. 20-8809 in this Judicial District against Teva USA and Teva Ltd. on July 13, 2020, which was later consolidated with Civil Action No. 20-3485 on August 14, 2020 (D.I. 33 in Civil Action No. 20-3485 and D.I. 16 in Civil Action No. 20-8809);

WHEREAS, TherapeuticsMD filed the related Civil Action No. 20-11087 in this Judicial District against Teva USA and Teva Ltd. on August 21, 2020, which was later consolidated with Civil Action No. 20-3485 on September 18, 2020 (D.I. 43 in Civil Action No. 20-3485 and D.I. 17 in Civil Action No. 20-11087);

WHEREAS, TherapeuticsMD filed the related Civil Action No. 20-17496 in this Judicial District against Teva USA and Teva Ltd. on November 30, 2020;

WHEREAS, Teva USA hereby acknowledges its acceptance of service of the complaint in Civil Action No. 20-17496;

WHEREAS, the Court dismissed Teva Ltd. from Civil Action No. 20-3485 on June 12, 2020 (D.I. 9 in Civil Action No. 20-3485), dismissed Teva Ltd. from Civil Action No. 20-8809 on July 28, 2020 (D.I. 11 in Civil Action No. 20-8809), dismissed Teva Ltd. From Civil Action No. 20-11087 on September 8, 2020 (D.I. 9 in Civil Action No. 20-11087), and dismissed Teva Ltd. from Civil Action No. 20-17496 on December 8, 2020 (D.I. 10 in Civil Action No. 20-17496);

WHEREAS, TherapeuticsMD and Teva USA jointly request that Civil Action Nos. 20-3485 and 20-17496 be consolidated;

IT IS on this _____ day of _____, 2020,

ORDERED that Civil Action Nos. 20-3485 and 20-17496 (the “Consolidated Actions”) are consolidated for all purposes, including discovery, case management, and trial, subject to further order of the Court;

IT IS FURTHER ORDERED that all filings in the Consolidated Actions shall use the above caption on this Order;

IT IS FURTHER ORDERED that all filings going forward shall be filed in Civil Action No. 20-3485 and that Civil Action No. 20-17496 shall be administratively terminated by the Clerk's office; and

IT IS FURTHER ORDERED that the Consolidated Actions shall proceed on the following amended schedule:

<u>Event</u>	<u>Deadline</u>
Plaintiff to identify asserted claims of '697 and '487 Patents	December 16, 2020
Teva USA to answer, move, or otherwise respond to TherapeuticsMD's Complaint in Civil Action No. 20-17496	December 21, 2020
Teva USA to serve "Invalidity Contentions" and "Noninfringement Contentions" and corresponding disclosures (L. Pat. R. 3.6(c)-(f)) for '697 & '487 Patents.	January 25, 2021
Plaintiff to serve "Disclosure of Infringement Contentions" and "Responses to Invalidity Contentions" and corresponding documents (L. Pat. R. 3.6(g)-(i)) for '697 & '487 Patents.	March 8, 2021
Parties to exchange a list of claim terms which that party contends should be construed by the Court (L. Pat. R. 4.1(a))	March 18, 2021
Parties to simultaneously exchange "Preliminary Claim Constructions" and identification of supporting intrinsic and extrinsic evidence (L. Pat. R. 4.2(a)-(b))	March 25, 2021
Parties to exchange identification of intrinsic and extrinsic evidence that each party intends to rely upon to oppose the other party's proposed construction (L. Pat. R. 4.2(b)-(c))	March 30, 2021
Parties shall meet and confer for the purposes of narrowing the issues and finalizing preparation of a Joint Claim Construction and Prehearing Statement	March 30, 2021
Parties file Joint Claim Construction and Prehearing Statement,	April 2, 2021
Parties to file Opening Markman briefs (L. Pat. R. 4.5(a))	April 21, 2021
Completion of Expert Discovery Relating to Opening <i>Markman</i> Submissions (L. Pat. R. 4.5(b))	May 10, 2021
Parties to file Responsive <i>Markman</i> briefs (L. Pat. R. 4.5(c))	May 26, 2021
Parties to meet and confer and submit proposed Claim Construction Hearing schedule (L. Pat. R. 4.6)	May 28, 2021
<i>Markman</i> Hearing for disputed claim terms	June 2021 (subject to the Court's availability)
Close of Fact Discovery	August 13, 2021
Opening Expert Reports	September 17, 2021
Responsive Expert Reports	November 5, 2021
Reply Expert Reports	December 10, 2021
Close of Expert Discovery	February 18, 2022

Final Pre-trial Conference	March/April 2022
Trial	March/April 2022
Expiration of 30-month stay	August 20, 2022

SO ORDERED.

Hon. Edward S. Kiel, U.S.M.J.